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SUBJECT: BRAZIL CITES LARGEST SUGAR PRODUCER FOR LABOR CONDITIONS

REF: 09 BRASILIA 1044

¶1. (SBU) Summary: On December 31, 2009, Ministry of Labor (MOL) inspectors put Cosan, the world's biggest sugarcane producer on its list of companies, Portaria 540, who allegedly keep workers in "slave-like" conditions. In Brazil, Portaria 540 is commonly known as the "dirty list." On January 11, the company was removed from the list after its lawyers obtained a court injunction against the MOL's decision. The case continues and could go to the Federal Supreme Court. Labor rights NGOs support the MOL's decision and have criticized the court ruling in favor of Cosan. In contrast, sugar industry representatives say the MOL's inspections are a politically motivated attack on agribusiness. Despite the controversy, advocates say the list remains an effective, if perhaps imperfect tool to fight labor exploitation. End Summary.

#### BRAZIL'S DEFINITION OF FORCED LABOR

¶2. (SBU) Brazilian labor law bans forced labor and, under a 2003 amendment, prohibits workers from being subjected to "slave-like" or degrading conditions. While forced labor is defined as "coercion and lack of freedom of mobility through force and/or debt bondage", the law contains no definition of "degrading" work conditions. NGOs claim this is a matter of common sense. Mill owners and Brazil's largest sugar-growers association, UNICA, argue that the vagueness is a key weakness in the law and that it leads to unfair and subjective enforcement.

#### BACKGROUND ON THE DIRTY LIST

¶3. (U) The Ministry of Labor created the "dirty list" (Portaria 540) in October 2004, based on its constitutional authority to enforce labor standards. The list is updated every six months and currently there are 163 companies from 15 states on the list. The process for adding companies and people is the following:

--The MOL sends Mobile Inspection Teams consisting of a Labor agent, a Labor prosecutor and Federal Police officers to inspect sugar plantations and other enterprises for labor violations. The

teams take notes and use pictures and video to record what they find. If the inspectors find what they determine are "slave-like" conditions, they "free" those workers, a case is opened and fines are levied.

--The case passes through an internal administrative process at the MOL that, depending on a variety of factors, including legal action, can last from a couple of weeks to a couple of years. (Note: Cosan's 2009 list appearance, for example, was based on a 2007 inspection. End Note.)

--The company or person's name is published on the list with copies of formal notification sent to several ministries and public banks.

--The company remains on the list for two years. At the end of this time, the offending organization is removed if no new complaints have been filed and it has paid all fines and remedied the situation of its workers.

#### HOW COSAN GOT ON AND THEN OFF THE LIST

14. (SBU) In 2007 a tip led the Ministry of Labor to inspect a Cosan-owned mill (Junqueira) in Igarapava, Sao Paulo. The Mobile Inspection Team stated that it had "freed" 42 workers of a Cosan sub-contractor from "slave-like conditions" and found thirteen infractions including: debt bondage, unregistered employees, lack of easily accessible fresh/potable water and underage workers in precarious and unsanitary conditions. (Note: Typically, the MOL reports "freeing" any workers it finds in "degrading" conditions. End Note.) No restriction of freedom of movement was found by the inspectors. According to both UNICA and Reporter Brasil reps, Cosan fired the sub-contractor, paid all the fines levied by the MOL in the wake of the inspection, promised to correct any irregularities and signed a document admitting fault. Cosan reps believed these actions closed the case in 2007 and thus were surprised on December 31 when the MOL published their company's name on the Ministry's 2009 "dirty list" update.

15. (U) Upon release of the list, Brazil's National Development Bank BNDES (the country's largest source of corporate loans) temporarily suspended all transactions with Cosan. Walmart Brazil (WB) also stopped purchasing Cosan sugar brands and Petrobras and Shell considered restrictions against the firm. On January 11, Cosan was removed from the MOL's list after its lawyers obtained a court injunction. In his decision approving the injunction, Judge Raul Gualberto Fernandes Kaspar de Amorim said that the MOL possessed insufficient evidence of conditions analogous to slave labor. He also noted that the labor infractions allegedly committed had been carried out by one of Cosan's many labor sub-contractors. The Labor prosecutor in charge of the inspection, Carina Rodrigues Bicalho, disagreed with the Judge's ruling. She cited several conditions that violated the law, including: debt bondage, degrading conditions and precarious work, as well as poor housing and transport. The Ministry of Labor plans to challenge Judge Fernandez Kaspar's decision.

#### NGO LAUDS EFFECT OF "THE DIRTY LIST"

16. (SBU) Following the court injunction, Poloff met with Leonardo Sakamoto and Mauricio Hashizume of the labor rights NGO Reporter Brasil. Reporter Brasil has been following Cosan for several years and is not surprised that the company appeared on the MOL's list. Hashizume noted that several legal experts known to Reporter Brasil consider the January decision by Judge Fernandes to be a weak one.

As a substitute judge in the 10th Regional Labor Tribunal where the injunction was requested, Fernandes is unfamiliar with forced labor cases -- including the notion that most sugar cane companies regularly use labor sub-contractors and are legally responsible for their actions. Further, both Sakamoto and Hashizume lauded the "dirty list" as a powerful tool that aids transparency and creates market-driven punishment for employers that engage in inhumane labor practices. Reporter Brasil stated that very few, if any, companies have repeat appearances on the list. In their view, Cosan's inclusion on the list shows that the MOL is dedicated to going after slave labor, irrespective of company size and clout.

#### SUGARCANE GROWERS ASSOCIATION CRITIQUES

¶7. (SBU) DPO and Poloff also met with Adhemar Altieri, Director of Communications, at UNICA for the sugar industry's view of the case. Altieri criticized the MOL's methodology and stated that the industry has improved conditions for workers. In June 2009, UNICA was one of the major proponents of a historical tripartite agreement between the government, industry and workers to ameliorate the working conditions of cane cutters. (Ref. A)

¶8. (SBU) Alteiri characterized the MOL's criticisms of agribusiness as politically motivated by the leftist Democratic Worker's Party (PDT), whose president is also Minister of Labor Carlos Lupi. He stated that the MOL targets the sugar cane industry because the government can get more political "bang for the buck" by going after sugar growers. Similar labor inspections of cattle ranches usually only result in the "freeing" of one or two people (due to the dispersed nature of the industry). In contrast, a labor inspection of a sugar plantation can lead to an announcement that "hundreds" of workers were freed from "slave-like conditions," for citations including a stopped toilet or broken showerhead. Altieri complained that the laws regarding forced labor are too vague, the MOL's Mobile Inspection Teams have little oversight, and the publishing of names on the "dirty list" punishes companies financially and socially in public without due process. He also criticized the MOL's rhetoric, which announces that its teams are "freeing" workers. He says this promotes a vision that does not characterize the contemporary sugar industry. Altieri further complained that USG reporting of "flawed" facts and figures put out by the MOL and the Brazilian press gives such reports greater credibility than they deserve.

#### WALMART STUCK IN THE MIDDLE

¶9. (SBU) Just one week after Cosan's appeared on the list, Walmart Brazil (WB) temporarily suspended product purchases from Cosan. WB Sustainability and Institutional Relations Manager Carolina Costa (Note: Costa worked with UNICA until mid-2009. End Note.) stated that WB had a long-standing (15-year) relationship with Cosan. However, as a signatory to the 2005 National Pact Against Forced Labor, WB had no choice but to act once Cosan appeared on the "dirty list." When Cosan was dropped from the list, Walmart Brazil immediately resumed purchases from the company.

#### COMMENT:

¶10. (SBU) While controversial, imperfect, and possibly subject to political agenda, the list, with its low recidivism rate, has pushed Brazilian employers' adherence to the 2005 Pact to Eliminate Slave Labor. Over the long run, controversy over labor conditions in the sugar industry should ease as manual cutting continues to diminish and regulatory-mandated machine-cutting is implemented in most of Brazil by 2017. In the meantime, as Cosan's case generates a lengthy legal battle on the constitutionality of the "dirty

list", further MOL cases involving the industry are likely given the vague definition of "slave-like" working conditions.  
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